

ERIE COUNTY DEPARTMENT OF HEALTH CLEAN INDOOR AIR ACT WAIVER PROCESS

As you are aware, the Clean Indoor Air Act (CIAA), effective July 24, 2003, mandates nearly every workplace in the State of New York to be smoke-free. The Act aims “to prohibit exposure to second hand smoke by regulating smoking in all workplaces.”

Included in the CIAA is a provision which authorizes the Erie County Department of Health (ECDOH) to review waiver applications. That same provision places an obligation on the ECDOH to ensure “that the waiver is consistent with the general purpose of the article.” Therefore, any waiver granted must conform with the intention of the law.

The merits of each waiver application will be considered individually. In order for the ECDOH to consider your waiver application, you must accurately and reliably demonstrate and/or provide the information below.

1. Compliance with the CIAA has resulted in an undue financial hardship OR other factor(s) exist that would render compliance with the CIAA unreasonable.
2. Establishment of an undue financial hardship will require demonstration of a precipitous, temporally related, and sustained reduction in New York State sales tax receipts of at least fifteen percent (15%) despite reasonable corrective measures and supported by other documentation including, but not limited to a reduction in beer, wine, liquor, and other alcohol purchases, a reduction in workforce, etc.
3. The claimed undue financial hardship must be clearly demonstrated to have been caused solely by enactment of the CIAA and all other external factors must be shown to be unrelated. Other factors might include, but are not limited to: a new like business established in the general vicinity, a change in operating hours, a change in operations, construction near the establishment, etc.
4. Applicants must submit exact copies of monthly New York State sales tax statements that were submitted to the State of New York and Federal Form 941 for the period of January 2001 through the end of the month prior to the date of this application. If the establishment has not been in existence since January 2001, exact copies of monthly New York State sales tax statements and Federal Form 941 since the commencement of operation should be submitted.
5. Applicants must provide a description of all efforts made to operate the facility profitably as a smoke-free environment.
6. It is imperative that applicants submit a plan consistent with all requirements and conditions included in Section F and/or G of this waiver application, and that clearly demonstrates how employees, patrons, and employees of other businesses (e.g., vendors, contractors) will continue to be protected from exposure to second-hand smoke if a waiver is granted.
7. Applicants must show in Section F and/or G of this waiver application how the business operation will be modified and/or new marketing strategies will be

- employed to enable conformity with the CIAA after the waiver expires. (The maximum waiver period is 365 days.)
8. An applicant claiming that other factor(s) exist that would render compliance unreasonable must include authoritative documentation outlining the factors involved, the unique circumstances, and the mitigation to ensure compliance with the CIAA so as to prevent involuntary exposure to second-hand smoke.
 9. Name of establishment and application section letter and question number must be included on all supporting documentation.

Enclosed you will find the Erie County Department of Health, Clean Indoor Air Act waiver application. Please return the application with a non-refundable payment of \$98.00 for plan review. Applicant is responsible to ensure that the application is complete. Incomplete applications will be returned without further review. Reapplications can be resubmitted along with a new plan review fee of \$98.

SUBMITTING THE APPLICATION:

Submit the completed application, the plan review fee and supporting documents to:

Erie County Health Department
95 Franklin Street - Room 906
Buffalo, New York 14202

Checks should be made payable to the Erie County Health Department

For additional information, please contact the Erie County Health Department at 858-6089.